

MINUTES OF THE MEETING  
FISH AND GAME COMMITTEE  
MONTANA STATE SENATE

February 3, 1987

The fifth meeting of the Fish and Game Committee was called to order at 1:00 p.m. on February 3, 1987, by Chairman Ed. Smith in Room 402 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 171: Senator William Yellowtail, Senate District 50, sponsor of the bill, stated the purpose of the bill is to clarify the provisions of the upland bird section in regards to the hunter having to have an upland bird license prior to being able to purchase a water fowl stamp. The language of the statutes would be clarified.

PROPOSERS:

Dick Johnson, Deputy Director, Fish, Wildlife and Parks Department, stated the Department supports SB 171 and submitted written testimony. (Exhibit 1)

Esther Stenberg, National Wildlife Federation, stated the Federation stands in favor of SB 171.

OPPOSERS:

There were no opposers to SB 171.

QUESTIONS FROM THE COMMITTEE:

Senator Smith asked if hunters would be rendered additional cost. Senator Yellowtail replied that no additional costs would be rendered to the hunter.

Senator Yellowtail stated the fiscal note assumes there would be a small decline in the number of bird licenses sold. The bill repeals the requirement that waterfowl hunters buy a bird license in addition to the state and federal duck stamp, so an anticipated increase in the number of waterfowl hunters is predicted. A negligible fiscal impact would be created due to anticipated decline in the bird licenses sold and it will be offset by the increase in waterfowl stamps sold.

Senator Smith stated that he is sponsoring a forthcoming pheasant enhancement bill that will increase upland bird licenses by \$2. The bill will generate a tremendous number of additional hunting licenses due to the number of birds that then will be transplanted by the program.

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Senator Al Bishop commented that SB 171 is a good bill for unwary hunters. Previously, hunters would be arrested because of the lack of a bird license while hunting ducks. The hunters had the duck stamp, but not the bird license.

The hearing was closed on SB 171.

CONSIDERATION OF SENATE BILL 172: Senator William Yellowtail, Senate District No. 50, sponsor of the bill stated the purpose of the bill is to allow a resident of Montana to purchase fishing and hunting licenses for certain family members. A resident may apply for the purchase of a wildlife conservation license, hunting license, and fishing license for his spouse, parent, child, brother, or sister who is otherwise qualified to obtain such licenses.

PROPOSERS:

Dick Johnson, Deputy Director, Fish, Wild Life and Parks Dept., presented written testimony in support of SB 172. (Exhibit 2)

OPPOSERS:

There were no opposers to SB 172.

QUESTIONS FROM THE COMMITTEE:

Senator Esther Bengtson asked if legal council prompted the department to change the 1985 law. Johnson replied that the Fish, Wildlife and Parks' legal council made it known that the procedure of issuing licenses was not legal due to the fact that the person receiving the license was required to sign the license at the time of purchase.

Senator John Anderson stated that young service men from his district found it difficult to obtain a license. Senator Anderson contacted Fish and Game Commission chairman, Spence Hegstad, and was able to obtain the license through the father of the servicemen.

Senator Smith stated that present law prevents his brother from hunting the first day of the season, because he travels from California and arrives in the Dagmar area late the night before the season begins and is unable to purchase the license due to the fact the license-selling outlets are closed.

The hearing was closed on SB 172.

EXECUTIVE ACTION:

Senator Smith decided to postpone executive action on SB 171 due to forthcoming amendments.

DISPOSITION ON SENATE BILL 172: Senator Bengtson moved that the committee recommend a DO PASS on SB 172. The motion passed unanimously.

DISPOSITION ON SENATE BILL 107: Senator Bengtson moved the committee recommend a DO NOT PASS on SB 107.

Senator Severson stated that the area in question is a large area taking in areas other than river beds. The bill is similar to Morton Groove Illinois bill. Senator Al Bishop asked if the Fish and Game Commission could rectify the fire-arm problem under existing powers. Deputy Director Johnson replied the commission has the authority to make such restrictions. In fact, a petition had been brought to the department's attention, but dealt with a smaller area which did not include all the land the petitioners wanted it to include. The commission proposed a small closure area where the population was most congested. Smith stated that the river was a navigable stream that could be closed by the commission.

Senator Bengtson commented that the Missoula County Commissioners wanted the bill. Senator Jergeson stated that the bill was supported by the Missoula County Commissioners, but supported the bill with changing the wordage from "may" to "shall"; a watershed change in legislative language. The commission did not address the original language, and according to Jergeson's interpretation, the commission was trying to use the bill to do something entirely different. Jergeson stated that he opposed the word changes from "may" to "shall", and sees no reason for adopting the language on page 2 of the bill.

The motion made by Senator Severson, DO NOT PASS, passed unanimously.

DISPOSITION OF SENATE BILL NO. 53:

Andrea Merrill walked the committee through SB 53, stating the amendments were suggested by the Department of Fish, Wildlife and Parks. The title needs to be amended because the title speaks to a straight repealer. The department wants the wordage: "No person may capture, take, or otherwise acquire a fur bearer from the wild." The title must be changed to clarify the bill. The extension suggested by the department makes sense because the body of fur farm rules can be amended to account for the new section of unlawful capture. The codification causes the the new section to be placed in the fur farm section of the fish and game laws. Fur-bearers are private property if lawfully raised, not captured from the wild; and, therefore, can be used for purposes of taxation, liens, and other property purposes.

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Senator Smith asked if the bill infringes on the rights of the fur farms. Merrill stated that the repealer is an ancient law that dealt with making fur bearers private property. Smith asked if the language is the same as the game farm bill. Yes, it was. The department stated that this section was inadvertently omitted from the game farm bill which included fur farm legislation.

Senator Smith asked about the extension of authority within the bill. Merrill explained that the extension of authority makes it clear that the legislature recognized there may be a need to amend and not to start making rules in a whole new area.

Senator Jacobson moved that the committee recommend a DO PASS on the amendments to SB 53. The motion passed unanimously.

Senator Jacobson moved the committee recommend a DO PASS AS AMENDED on SB 53. The motion passed unanimously.

DISPOSITION OF SENATE BILL 139: Senator Smith announced that SB 139 will be transferred to the Senate Judiciary Committee.

ADJOURNMENT: There being no further business before the committee, Senator Smith, adjourned the meeting at 1:49 p.m.



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SENATOR ED SMITH, Chairman

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

+ +

Date: February 3, 1987

| NAME                                 | PRESENT | ABSENT | EXCUSED |
|--------------------------------------|---------|--------|---------|
| Senator Ed Smith, Chairman           | X       |        |         |
| Senator John Anderson                | X       |        |         |
| Senator Judy Jacobson                | X       |        |         |
| Senator Elmer Severson               | X       |        |         |
| Senator Greg Jergeson                | X       |        |         |
| Senator Al Bishop                    | X       |        |         |
| Senator Esther Bengtson              | X       |        |         |
| Senator Wm. Yellowtail<br>Vice-Chair | X       |        |         |

DATE February 3, 1987

COMMITTEE ON

Fish and Game

VISITORS' REGISTER

| NAME                        | REPRESENTING     | BILL # | Check One |       |
|-----------------------------|------------------|--------|-----------|-------|
|                             |                  |        | Support   | Oppos |
| RON MARCOUX                 | DFWP             | 171472 |           |       |
| <del>Rich Johnson</del>     | "                | " "    |           |       |
| ESTHER STENBERG             | MT Wildlife Fed. | 171    | X         |       |
| <del>Frances Blumrich</del> |                  |        |           |       |
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(Please leave prepared statement with Secretary)

SENATE FISH AND GAME

EXHIBIT NO. # 1

DATE February 3, 1987

BILL NO. SB 171

SB 171  
February 3, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The department supports SB 171 which separates the upland game bird license from the waterfowl stamp. The 49th legislature created the waterfowl stamp program which has been overwhelmingly accepted by the public.

One of the requirements for buying the waterfowl stamp for hunting was the prerequisite of an upland game bird license. This was required whether a person hunted upland birds or not. It was not the intent of the program, when adopted, to create this requirement. There are people who only hunt waterfowl and thus are required to buy an unnecessary license. They feel they should not be required to purchase a license which is totally separate from waterfowl hunting, and we agree.

The number of people this bill would affect is probably limited, since most people who hunt waterfowl also hunt upland birds and thus would ordinarily buy the upland bird license. We feel that in the essence of fairness, those hunting only waterfowl should not be required to buy an additional license they will not use.

We urge your support of this bill.

SENATE FISH AND GAME

EXHIBIT NO. #2

DATE February 3, 1987

BILL NO. SB 172

SB 172

February 3, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

For many years the department has allowed the practice of one family member purchasing licenses for other members of the immediate family. While this practice worked well from the standpoint of the sportsman, as well as the department, the practice was discontinued in 1985 upon the advice of our legal counsel who felt there was not clear authority to conduct license sales in that manner. This legal advice reflected the current statute which requires sportsmen to sign for licenses in person.

SB 172 would allow the former practice to be resumed. In many cases it is inconvenient for residents to buy licenses for themselves. This is particularly true in rural areas where license agents are some distance away from those wanting the licenses.

We found no abuses with the past practice and feel this change will better serve the sporting public in Montana.

We urge passage of SB 172.



1 SENATE BILL NO. 53

2 INTRODUCED BY SMITH

3 BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

4 *MAKING IT UNLAWFUL TO CAPTURE*

5 *A FURBEARER FROM THE WILD;*

6 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING PRIVATE

7 PROPERTY RIGHTS IN WILD FUR-BEARING ANIMALS AND REPEALING

8 SECTIONS 70-2-112 AND 70-2-113, MCA."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1 Repealer. Sections 70-2-112 and 70-2-113,

11 MCA, are repealed.

Section 3. Extension of authority. Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 4. Codification instruction. Section 1 is intended to be codified as an integral part of Title 87, chapter 4, part 10 *And the provisions of Title 87, chapter 4, part 10 apply to section 1. (per forms)*

*(new)*

Section 1. Unlawful Capture. No person may capture, take, or otherwise acquire any furbearer from the wild for use on a fur farm."

*in law*

87-4-1001. Definition. For purposes of this part, the following definitions apply:

(1) "Furbearer" means a marten or sable, otter, muskrat, fisher, bobcat, lynx, wolverine, or beaver. The term does not include fox or mink.

(2) "Fur farm" means the enclosed land area upon which furbearers may be kept for purposes of obtaining, rearing in captivity, keeping, and selling furbearers or parts of furbearers as authorized under this part.

87-4-1008. Furbearers as private property. All furbearers lawfully raised on a licensed fur farm are the private property of the licensee, and the licensee may sell or transfer such furbearers as private property.



**70-2-103 through 70-2-110 reserved.**

**70-2-111. Wild animals.** Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

**History:** En. Sec. 1072, Civ. C. 1895; re-en. Sec. 4423, Rev. C. 1907; re-en. Sec. 6665, R.C.M. 1921; Cal. Civ. C. Sec. 656; Field Civ. C. Sec. 161; re-en. Sec. 6665, R.C.M. 1935; R.C.M. 1947-203.

**Cross-References**

Prohibition of possession of wild animals,  
50-23-102.

Fish and wildlife — fishing, hunting, and trapping licenses. Title 87, ch. 2.

Fish and wildlife — restrictions and regulations, Title 87, ch. 3.

**70-2-112. Property rights in fur-bearing animals.** Fur-bearing animals, which of their nature, in the absence of efforts for their domestication are known as wild, whenever the same shall have been brought into or born in restraint or captivity, whether in or upon reserves, preserves, parks, ranches, or other premises of lands or waters possessed or operated in whole or part for the preservation, culture, breeding, or growing of such animals in a state of whole or partial domestication and wherein or whereon routine attention is given to such preservation, culture, breeding, or growing of such animals, are and shall be together with their offspring and increase the subjects of ownership, lien, and all kinds of absolute and other property rights (the same as purely domestic animals) in whatever situation, location, or condition such animals may thereafter come or be and regardless of their remaining in or escaping from such restraint or captivity. However, such escape animals must bear a registered brand or tattoo, pursuant to 70-2-113, to be subject to private ownership.

**History:** En. Sec. 1, Ch. 97, L. 1933; re-en. Sec. 6665.1, R.C.M. 1935; R.C.M. 1947, 67-204.

**Cross-References**

Prohibition of possession of wild animals,  
50-23-102.

**70-2-113. Fur-bearing animals — recording of brands — fees.** (1) An owner or prospective owner of animals described in 70-2-112 is entitled by written subscribed statement to adopt distinctive brands or tattoo marks not including arabic numerals and not already in known use by others, for any of the animals and to have the distinctive brands and tattoo marks recorded in his name with the department of livestock on paying a recording fee equal to that charged for recording marks or brands used on domestic animals and livestock set by 81-3-107 for each brand and for each tattoo mark. The statements shall be recorded in a suitable book to be kept for that purpose by the department of livestock. The presence of the recorded brand or recorded tattoo marks on an animal is prima facie evidence of the ownership of the animal in the person, association, or corporation in whose name the brand or tattoo mark is recorded, subject always to the right to make a transfer of title, right, or interest in or lien on the animal.

(2) A person desiring to transfer a brand or mark properly recorded by him under this section may do so provided he meets the requirements and pays the fees imposed by Title 81, chapter 3, part 1. Brands or marks

# STANDING COMMITTEE REPORT

February 3,

19..... 87

MR. PRESIDENT

We, your committee on..... **Fish and Game** .....

having had under consideration..... **Senate Bill** ..... No. **53**

First reading copy ( White )

color

**ELIMINATE PRIVATE PROPERTY RIGHTS IN WILD FUR-BEARING ANIMALS**

**Senate Bill**

**53**

Respectfully report as follows: That..... No.....  
**be amended as follows:**

1. **Title, line 6.**  
**Following: "ANIMALS;"**  
**Insert: "MAKING IT UNLAWFUL TO CAPTURE A FURBEARER FROM THE WILD;"**
2. **Page 1, following line 9**  
**Insert: "Section 1. Unlawful capture. No person may capture, take, or otherwise acquire a furbearer from the wild for use on a fur farm."**  
**Renumber: subsequent section**
3. **Page 1, following line 11**  
**Insert: "Section 3. Extension of authority. Any existing authority of the department of fish, wildlife, and parks to make rules on the subject of the provisions of this act is extended to the provisions of this act.**

**Section 4. Codification instruction. Section 1 is intended to be codified as an integral part of Title 87, chapter 4, part 10, and the provisions of Title 87, chapter 4, part 10 apply to section 1."**

**AND AS AMENDED**

DO PASS

~~DO NOT PASS~~

.....  
**Senator Ed Smith**

.....  
Chairman.

# STANDING COMMITTEE REPORT

.....February 3, 1987..... 19.....

MR. PRESIDENT

**Fish and Game**

We, your committee on.....

having had under consideration..... **Senate Bill** ..... No. **107**

**First** reading copy ( **White** )  
color

## SAFETY CRITERIA FOR NO-SHOOTING AREAS

Respectfully report as follows: That..... **Senate Bill** ..... No. **107**

~~XXXXXX~~

DO NOT PASS

.....  
**Senator Ed Smith**

Chairman.

# STANDING COMMITTEE REPORT

February 3, 1987

19.....

MR. PRESIDENT

**Fish and Game**

We, your committee on.....

**Senate Bill**

**172**

having had under consideration..... No.....

**First**

**White**

reading copy ( )

color

## PURCHASE OF HUNTING LICENSES FOR FAMILY MEMBERS

**Senate Bill**

**172**

Respectfully report as follows: That..... No.....

DO PASS

~~DO NOT PASS~~

.....  
**Senator Ed Smith**

Chairman.